

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NICHOLAS BERGERON and BARBARA
MYCEK, individually and on behalf of others
similarly situated,

Plaintiffs,

v.

ROCHESTER INSTITUTE OF TECHNOLOGY

Defendant.

Case No. 6:20-cv-06283

**DECLARATION OF MILAGROS
CONCEPCION IN SUPPORT OF
ROCHESTER INSTITUTE OF
TECHNOLOGY'S MOTION
FOR SUMMARY JUDGMENT**

I, MILAGROS CONCEPCION, declare:

1. I am the Controller for Rochester Institute of Technology ("RIT") in Henrietta, New York. In my capacity as Controller, I have responsibility for RIT's financial reporting, general accounting, property accounting, payroll and accounts payable, procurement, treasury operations/cash management, endowment, gift accounting, debt management, planned giving administration, student financial services, sponsored programs post-award administration, tax reporting and compliance, travel administration, accounting and financial reporting for global programs, financial management and business services in six of RIT's nine colleges and Student Auxiliary Services.

2. I am over the age of 18 and, if called to testify, would testify competently about the facts set forth herein.

3. The statements in this declaration are made upon my personal knowledge or review of business records created in the ordinary course of RIT's business, and in the control, possession, or custody of RIT.

4. RIT is a private not-for-profit educational institution. It offers 79 Bachelor's degree programs, 69 Master's degree programs, 13 Ph.D. programs, and 63 accelerated dual-degree programs across eleven schools¹.

5. Because RIT is a private institute, it does not receive government funding to support its operations. RIT's operations are supported exclusively by the tuition and fees revenues it collects, donor gifts, research grants, revenue generating contracts, auxiliaries sales and services (such as housing and dining), and investment returns. A true and correct copy of RIT's audited financial statements for the 2019-2020 fiscal year is attached as **Exhibit 1**. A breakdown of RIT's operating revenues is included at page 3.

6. During the spring 2020 semester, RIT's published tuition and fees rates for undergraduate students were as follows:

	For Students Enrolled Before Fall 2018	For Students Enrolled After Fall 2018
Full-Time Tuition (12-18 credit hours)	\$21,323	\$22,622
Rate per Additional Credit Over 18	\$1,131 per credit hour	\$1,131 per credit hour
Part Time Tuition (under 12 credit hours)	\$1,616 per credit hour	\$1,616 per credit hour
Student Activities Fee	\$148	\$148
Student Health Services Fee	\$175	\$175

A true and correct copy of RIT's published tuition and fee rates for undergraduate students during the spring 2020 semester is attached as **Exhibit 2**.

7. Even in years when RIT was not impacted by COVID-19 and government shut-down orders, the tuition and fees revenue RIT actually collects is sufficient to cover only approximately 50% of RIT's cost of educating its students. This is so because RIT provides

¹ Including the National Technical Institute for the Deaf.

institutional aid to the overwhelming majority of its students – 95% during the 2019-2020 academic year – which reduces the amount of tuition and fees revenue RIT is able to collect. During the spring 2020 semester, RIT provided \$103,247,350 in institutional financial aid to its students.

8. As with its overall operations, RIT operates its student health services at a loss each year. RIT charges its students a Student Health Fee each semester. The revenues from the Student Health Fee are used exclusively to fund the student health center, including staff wages and benefits for health center employees and materials.

9. During the 2019-2020 academic year, RIT collected \$4,663,041 in Student Health Fees. Its cost to operate the student health center totaled \$8,518,571. The student health center continued to operate after RIT transitioned to distance learning, including providing in-person services as needed to RIT students who had to stay on-campus, and providing telehealth services to all RIT students, no matter where located. Notably, the student health center's telehealth services were considerably expanded after March 2020 as a result of student demand, which continued into the 2020-2021 academic year.

10. The Student Activity Fees collected by RIT are designated and held exclusively to fund student activities. The Student Activity Fee funds, for example, salaries for Student Affairs Office employees, concerts, student clubs, concerts, Senior Night, the spring festival, RIT sports, student leadership training, etc.

11. With administrative oversight from Student Affairs Office staff, the student government determines the budget for student activities each year and how to spend the Student Activity Fee revenues. If RIT does not completely expend the Student Activity Fee revenues in a particular academic year, the remaining funds are held in reserve for capital expenditure projects

related to student activities and services, so that RIT students continue to benefit directly from the Student Activities Fee.

12. During the 2019-2020 academic year, RIT collected \$4,030,323 in Student Activity Fees. In total, \$3,411,953 of those revenues were expended, including on activities held remotely for RIT students after the transition to distance learning and non-refundable expenses related to events that had to be cancelled as a result of the New York State stay-at-home orders. The remainder of those revenues were placed in reserve exclusively for student activities.

13. RIT did not save any money as a result of the COVID-prompted transition to distance learning in 2020 – in fact, the opposite was true: RIT expended more money as a result.

14. First, RIT's ordinary operating expenses continued. The largest portion of RIT's operating expenses are salaries, wages, and benefits for faculty, administrators, and staff. See Ex. 1. Faculty continued to teach; the administration continued to manage RIT's operations; and staff continued to execute RIT's operations. And RIT's salaries, wages, and benefits are mostly set on an annual basis or based on multi-year contracts, so RIT could not terminate those expenses.

15. Second, because education was considered an essential business during the pendency of New York State's stay-at-home orders, RIT continued necessary in-person services and incurred related costs. For example, RIT's dorms remained open for students that could not safely go home, and thus buildings had to be powered and heated, meals had to be provided and delivered, etc. RIT continued to incur basic building maintenance and utilities costs, and continued to pay its taxes and insurance costs.

16. Third, RIT incurred substantial *additional* costs to address the health and safety concerns posed by COVID including, for example, personal protective equipment, hand sanitizer stations, plexiglass dividers, and Zoom licenses for student and faculty – none of which were

anticipated or budgeted for. Between March 1, 2020 and June 30, 2020 alone, RIT incurred nearly \$450,000 in additional COVID-related expenses above and beyond its ordinary operating expenses. Those COVID-related expenses continued into later semesters, with RIT spending over \$7,300,000 on COVID-related expenses as of June 30, 2021.

17. Fourth, RIT lost approximately \$13,700,000 in auxiliary revenue when it issued housing and dining refunds to students who moved out of campus housing. Those auxiliary revenues comprise a substantial portion of RIT's operating budget each year.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed this 19 day of September 2022, in monroe, New York.


MILAGROS CONCEPCION